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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9                   JASON MARK HART,

10                  Plaintiff,

11                  v.

12                  KARIE RAINER, et al.,

13                  Defendant.

CASE NO. 2:20-cv-01464-RSM-BAT

**ORDER GRANTING MOTION FOR  
VOLUNTARY DISMISSAL**

14         Plaintiff, proceeding *pro se*, commenced this 42 U.S.C. § 1983 civil rights action on  
15 October 1, 2020. Dkt. 1. Plaintiff subsequently filed an Amended Complaint naming as  
16 Defendants: the Department of Corrections, Lemin Sennah, and Karie Rainer. Dkt. 10. On  
17 February 8, 2021, Defendants filed their answer to the Amended Complaint. Dkt. 18. On February  
18 12, 2021, the Court issued a Pretrial Scheduling Order setting discovery and dispositive motions  
19 deadlines of May 11, 2021, and June 10, 2021 respectively. Dkt. 19. The pretrial deadlines were  
20 subsequently amended to extend the discovery deadline to July 6, 2021 and the dispositive motions  
21 deadline to August 6, 2021. Dkt. 30. On May 4, 2021, Plaintiff filed a Motion to Compel and a  
22 Motion to Voluntarily Dismiss the action. Dkts. 31, 32. Defendants oppose the Motion to Compel  
23 and join in Plaintiff's Motion to Voluntarily Dismiss. Dkt. 33, 34, 35.

## **DISCUSSION**

Federal Rule of Civil Procedure Rule 41(a) governs the voluntary dismissal of an action in federal court. Rule 41(a)(2) provides that unless a plaintiff files a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or the parties stipulate to the dismissal of the action, “[a]n action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper . . . .” FED. R. CIV. P. § 41(a)(2). The decision to grant or deny a motion pursuant to Rule 41(a)(2) is within the sound discretion of the trial court and may be reviewed only for abuse of that discretion. *Sams v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir.1980).

A motion for voluntary dismissal pursuant to Rule 41(a)(2) should be granted unless a defendant can show that it will suffer some plain legal prejudice as a result of the dismissal. *Smith v. Lench*, 263 F.3d 972, 975 (9th Cir. 2001); *Stevedoring Services of America v. Armilla Intern. B.V.*, 889 F.2d 919, 921 (9th Cir. 1989) (stating that the purpose of Rule 41(a)(2) is “to permit a plaintiff to dismiss an action without prejudice so long as the defendant will not be prejudiced . . . or unfairly affected by dismissal.”).

Although it is somewhat unclear why Plaintiff filed his Motion to Compel and Motion to Voluntarily Dismiss on the same day, Plaintiff's Motion to Voluntarily Dismiss makes clear that he intends to voluntarily dismiss the action against all named Defendants. Dkt. 32. Specifically, Plaintiff's Motion states that "I hereby withdraw/voluntarily dismiss my civil complaint/suit against Dr. Karie Rainer, ARNP Lamin [sic] Sennah, DOC et al." *Id.* Defense counsel, in responding to Plaintiff's motion, indicates that she spoke to Plaintiff and confirmed his intention to dismiss this lawsuit in its entirety. *See* Dkts. 34, 35. Defendants join in Plaintiff's Motion to Voluntarily Dismiss. *Id.*

As previously noted, Defendants recently filed an answer to Plaintiff's Amended Complaint and no dispositive motions have been filed at this point in the action. Furthermore, Defendants have joined in Plaintiff's motion and do not argue that they will suffer any prejudice if the action is dismissed without prejudice. Accordingly, the Court finds that Defendants will not be unfairly prejudiced by a dismissal without prejudice given that this litigation is in its early stages and neither the Court nor the parties have yet invested substantial time or resources.

## **CONCLUSION**

8 Plaintiff's Motion to Voluntarily Dismiss (Dkt. 32), which is joined by Defendants, is  
9 GRANTED. Plaintiff's Amended Complaint (Dkt. 10) is DISMISSED without prejudice.  
10 Plaintiff's Motion to Compel (Dkt. 31) is DENIED as moot. The Clerk is directed to close the case.

The Clerk is directed to send copies of this Order to the parties.

Dated this 28<sup>th</sup> day of May, 2021.

  
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RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE